

THE ESSENCE AND TYPES OF ADMINISTRATIVE PROCEDURES IN THE ACTIVITIES OF HIGHER EDUCATION INSTITUTIONS AS SUBJECTS OF THE IMPLEMENTATION OF THE EDUCATIONAL FUNCTION OF THE STATE

Olha Bezpalova, Kharkiv National University of Internal Affairs
Viacheslav Abroskin, Odessa State University of Internal Affairs
Olha Andriiko, Institute of State and Law of National Academy of Sciences of Ukraine
Olena Syniavska, Kharkiv National University of Internal Affairs
Sergiy Yevdokimenko, University of Kharkiv

ABSTRACT

The authors have conducted a study of the essence and types of administrative procedures in the activities of higher education institutions as subjects of the implementation of the educational function of the state. The norms of the current Ukrainian legislation (in particular, the Law of Ukraine "On Higher Education", some decisions of the Cabinet of Ministers of Ukraine), which regulate certain types of administrative procedures in the field of higher education, have been analyzed. The author's definition of the concept of "administrative procedure in the activities of higher education institutions" has been proposed. According to the results of the study, the essence of administrative procedures in the activities of higher education institutions has been determined. Administrative procedures have been classified in the context of the subject under study. Particular attention is paid to highlighting the features of each of the established administrative procedures in the activities of higher education institutions.

Keywords: Administrative Procedure, Higher Education Institutions, Accreditation, Licensing, State Control.

INTRODUCTION

In today's context, higher education as a strategic resource in the field of spiritual, cultural, and socio-economic development of the whole society as a whole and of every individual, in particular, occupies a significant place among the most important areas of state policy. The modern global educational process is characterized by the variability of educational systems, their structure, and determination of ways to solve specific problems (Reznik et al., 2019).

Given the focus of Ukrainian society on European integration, the higher education system does not stand aside. In turn, bringing the level of organization, the effectiveness of the

higher education system in Ukraine to the standards and requirements of the European educational space requires the creation of an effective mechanism for its legal support. The effectiveness of the mechanism of legal support for the activities of higher educational institutions of Ukraine as subjects of administrative law seems possible not only by fixing the corresponding administrative norms at the legislative level but also by clearly regulating the issues of their implementation.

Given the process of European integration in Ukraine, the priority is to solve the problem of the imperfection of the regulatory framework and its partial compliance with international education standards (Kulish et al., 2016).

Joining the European educational space requires an appropriate regulatory framework designed to ensure a high level of quality in the provision of educational services, the autonomy of higher education institutions, and the implementation of the principles of democratization and decentralization in higher education. The regulation of relations between the state and other subjects of legal relations in the field of higher education should be carried out in the framework of administrative procedures regulated by law. Despite the presence of a large number of scientific developments to study the features of administrative procedures in the activities of higher education institutions, a comprehensive study of their nature and classification into certain types remains relevant today.

LITERATURE REVIEW

In the context of the issues under investigation, it is important to establish the essence of the concept of “*administrative procedure*”, which has been repeatedly the object of study by scientists.

Thus, according to the definition of Bila (2015), the administrative procedure is a normative model of administrative procedural relations. At the same time, the scientist points out such a feature as determining by an administrative procedure only potential opportunities that can be (for non-power entities) or should be (for public administration bodies) used by future participants in administrative-procedural relations. In this context, the administrative procedure not only determines the order of actions of subjects of administrative law at a certain stage of the administrative process but also takes into account the reciprocity of the rights and obligations of participants in legal relations and the grounds for their implementation.

According to Yuriichuk (2018), administrative procedure should be understood as a normatively fixed algorithm (procedure for achieving a result) to consider and solve individual administrative affairs by public administration bodies, which are carried out with the aim of facilitating the implementation and protection of the rights, freedoms, and legitimate interests of individuals and legal entities, and ensuring the rule of law in Ukrainian society.

Yarmaki (2019) proposes to define the administrative procedure as an activity of executive and local self-government authorities, which is regulated by the administrative-procedural norms, aimed at exercising their powers in relations with non-subordinate citizens and their organizations, and not related to the consideration of cases or the application of coercive measures. It is also important to note that the administrative procedure is considered by the author as a component of the administrative process.

Boiko (2019) has another point of view in this regard stating that the administrative procedure is connected only with the mechanisms by which the public administration implements its instruments of activity, and therefore has significant differences from the administrative process. If the administrative process is a judicial procedure for resolving some public law disputes, then the administrative procedure covers all the activities of the public administration from the exercise of powers to provide administrative services to the application of administrative coercive measures, and the like. Therefore, these categories explain completely different mechanisms, have different tasks and purposes.

Thus, as one can see, the approaches of scientists to determining the essence of the concept of administrative procedure differ. Some of them consider the administrative procedure as an integral part of the administrative process, while others, on the contrary, note the significant differences between these categories.

The analysis of the current Ukrainian legal framework shows that the definition of the concept of administrative procedure is not regulated in it.

METHODOLOGY

In order to study the nature and types of administrative procedures in the activities of higher educational institutions as subjects of the implementation of the educational function of the state, the dialectic method, the method of system-structural analysis and the formal legal method are used. The use of the dialectical method made it possible to define the concept of “*administrative procedure in the activities of higher educational institutions*”. Using the method of system-structural analysis, the authors determined the essence of administrative procedures in the activities of higher educational institutions and also classified administrative procedures in the activities of higher educational institutions into separate types. The formal legal method was used to analyze certain norms of the current Ukrainian legislation (in particular, the Law of Ukraine “*On Higher Education*”, some resolutions of the Cabinet of Ministers of Ukraine) in the context of the topic under study.

FINDINGS AND DISCUSSIONS

Administrative procedures in the field of education, including in the activities of higher educational institutions, include a large number. The legislation does not establish this list. Therefore, to determine the types of administrative procedures in the activities of higher education institutions, it is necessary to refer to their classification at the doctrinal level.

Thus, Frolov (2014) divides the administrative procedures in the activities of higher education institutions into the following types:

1. The procedures for the creation and reorganization of higher education institutions;
2. Licensing of their activities, accreditation;
3. The procedure for admission to higher education institutions;
4. The procedure for individual accounting of the results of assimilation by students of educational programs;
5. Procedures related to the implementation of student status;
6. The procedure, types, and forms of advanced training of scientific and pedagogical workers;
7. Procedures for the recognition and equivalence of documents of foreign states on higher and postgraduate professional education;

8. The procedures for awarding academic degrees, conferring academic titles, and the like.

However, among the studied classifications of administrative procedures in the activities of higher education institutions, the classification proposed by Huberska is considered to be more successful and complete. The scientist conventionally classifies administrative procedures in the field of higher education into two general groups:

1. Internal;
2. External.

In turn, based on such a criterion as the field in which administrative procedures are implemented, Huberska additionally carries out their division into subgroups. Thus, the internal administrative procedures include the procedures for making and implementing managerial decisions in the field of higher education, and the external ones include

1. Constituent administrative procedures in the field of higher education;
2. Procedures for regulating the activities of higher education institutions;
3. Supervisory administrative procedures in the field of higher education (Huberska, 2016).

Thus, the authors consider it necessary to disclose the content of each of these administrative procedures in the activities of higher education institutions as subjects of the implementation of the educational function of the state.

The constituent administrative procedures in the activities of higher education institutions include education, reorganization, and liquidation. Based on the analysis of Art. 31 of the Law of Ukraine “*On Higher Education*” dated July 1, 2014, the determination of the body that takes the decision to create, reorganize (merge, acquire, demerge & transform), or liquidate a higher education institution depends on the form of ownership of the institution. If the institution is in state ownership, then such a decision is made by the Cabinet of Ministers of Ukraine; for institutions of communal ownership-by the relevant local authorities; for privately owned institutions-by individuals and/or legal entities in accordance with the law, including religious organizations whose charters (provisions) are registered in the manner prescribed by law (Law of Ukraine, 2014).

Among the administrative procedures for regulating the activities of higher education institutions, accreditation and licensing are distinguished. The legislative definition of the concepts of “*accreditation*” and “*licensing*” is contained in the Law of Ukraine “*On Higher Education*”. Thus, according to paragraph 4 of Part 1 of Art. 1 of the Law, the legislator understands the accreditation as the assessment of the educational program and/or educational activities of higher education institutions for this program with a view to ensuring and improving the quality of higher education. Licensing is a procedure for recognizing the ability of a legal entity to carry out educational activities in accordance with the licensing conditions for educational activities (paragraph 15, Part 1, Article 1 of the Law) (Law of Ukraine, 2014).

Accreditation and licensing as types of administrative procedures in the activities of higher education institutions form the basis of the mechanism for regulating the activities of institutions and the quality assurance system of higher education in Ukraine. Given the relevance of state and public management of the quality of educational services in Ukraine, it is in the

processes of licensing and accreditation of higher education institutions that an expert assessment takes place and a state guarantee of the quality of educational programs is provided (Sysoiev, 2019).

It is important to note that ratings are also included by scientists to the administrative procedures in the activities of higher educational institutions. The current Ukrainian legislation does not define this concept, as does the rating procedure. At the same time, in paragraph 7 of Part 1 of Art. 18 of the Law of Ukraine "*On Higher Education*" it is determined that one of the powers of the National Agency for the Quality Assurance of Higher Education is the formation of criteria for assessing the quality of educational activities, including scientific achievements, higher educational institutions of Ukraine, by which ratings of higher educational institutions of Ukraine can be determined (Law of Ukraine, 2014). The consolidated rating of Ukrainian universities is the Information educational resource "*Osvita.ua*". The national and international ratings of Ukrainian universities which are the most powerful among the experts and the media are used as initial data: Top-200 Ukraine, Scopus and the indicator "*EIT point for contract*", each of which uses different criteria for evaluating higher education institutions. The obtained generalized rating sums up the ranking places of higher education institutions according to the above mentioned ratings.

Control and supervisory administrative procedures in the field of higher education are represented by state control over the activities of higher education institutions and the provision of educational services. Art. 77 of the Law of Ukraine "*On Higher Education*" provides for state supervision (control) of compliance by universities regardless of ownership and subordination of legislation in the field of education and science and educational standards. The implementation of this type of control is attributed to the competence of the central executive body, which ensures the implementation of state policy in the field of education, which involves the exercise of state supervision (control) over the activities of educational institutions (Law of Ukraine, 2014). In Ukraine, the main body in the system of central executive bodies ensures the formation and implements the state policy in the fields of education and science. In the Regulation on the Ministry of Education and Science of Ukraine, approved by the Cabinet of Ministers of Ukraine dated October 16, 2014, one of the tasks of the Ministry of Education and Science of Ukraine is to ensure the formation and implementation of state policy in the field of state supervision (control) of the activities of educational institutions (Resolution of the Cabinet of Ministers of Ukraine, 2014). The central executive authority, the activity of which is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Education and Science and which implements the state policy in the field of education, in particular, on issues of the implementation of state supervision (control) of educational institutions to comply with legislation is the State Service for the Quality of Education of Ukraine (Resolution of the Cabinet of Ministers of Ukraine, 2018).

RECOMMENDATIONS

Thus, based on the analysis of scientists' approaches to the definition of the term "*administrative procedure*" and taking into account the issues under study, the following author's definition is provided: the administrative procedure in the activities of higher education institutions is the legislatively regulated procedure to consider and solve individual

administrative cases by public administration bodies (executive authorities and local self-government bodies), which aims to ensure the implementation and protection of rights, freedoms, and law interests of subjects of administrative relations in the field of higher education.

The essence of administrative procedures in the activities of higher education institutions as subjects of the implementation of the educational function of the state can be determined by the following features:

1. Legal nature;
2. Staged nature - a regulated sequence (order) of actions in the field of law enforcement and the adoption of relevant decisions;
3. Regulated sequence (order) of the actions of not only the subjects of public administration, as well as the behavior of private individuals (relations of public administration with private individuals);
4. Commitment to the final decision (administrative act);
5. Ensuring the implementation and prevention of violations of the rights of individuals (higher education applicants and other persons studying in HEI and scientific institutions);
6. Specific nature (a specific administrative case is settled);
7. Indisputable nature (resolving individual administrative cases but not resolving disputes or complaints of individuals against actions or decisions of public administration entities), etc.

CONCLUSION

Bringing the level of organization, the efficiency of functioning of the higher education system in Ukraine to the standards and requirements of the European educational space requires certainty, clarity, and specificity of legal regulation of administrative procedures in the activities of higher education institutions.

At the doctrinal level, there are different classifications of administrative procedures in the activities of higher education institutions. At the same time, the classification by which they are divided into internal and external is more successful and complete. If internal administrative procedures include procedures for decision-making and implementation of managerial decisions in the field of higher education, then external ones include;

1. Constitutional administrative procedures in the field of higher education (creation, reorganization, and liquidation of higher education institutions)
2. Procedures for regulating the activities of higher education institutions (licensing, registration, rating of higher education institutions)
3. Control and supervisory administrative procedures in the field of higher education (state control over the activities of higher education institutions, the provision of educational services).

In summary, it is important to note that the administrative procedures in the activities of higher education institutions in Ukraine should be implemented on the basis of respect for both the rights, freedoms, and legitimate interests of individual and collective entities, as well as state interests.

REFERENCES

- Bila, V.R. (2015). Administrative procedure as a regulatory model of legal proceedings. *Naukovyi Visnyk Uzhhorodskoho Natsionalnoho Universytetu, Seriya Pravo*, 30(2), 12-15.
- Boiko, A.V. (2019). Administrative process and administrative procedure: Contents of the categories and their relations (some aspects of discussion). *Pravova Pozytsiia*, 3(24), 14-23.
- Frolov, Y.M. (2014). Administrative procedures in the activities of higher education in Ukraine. *Nashe Pravo*, 1(1), 74-81.
- Huberska, N.L. (2016). *Administrative procedures in higher education*. Avtoref. Kharkiv.
- Kulish, A.N., Harust, Yu.V., Reznik, O.N., & Utkina, M.S. (2016). Implementation and administrative framework of the inclusive education in the context of the European integration process. *Journal of Advanced Research in Law and Economics*, 6(20), 1405-1417.
- Law of Ukraine. (2014). *On higher education: As amended up to Act of January 16, 2020*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1556-18>
- Resolution of the Cabinet of Ministers of Ukraine. (2014). *On approval of the regulation on the ministry of education and science of Ukraine*. Retrieved from <https://zakon.rada.gov.ua/laws/show/630-2014-%D0%BF>
- Resolution of the Cabinet of Ministers of Ukraine. (2018). *Some issues of the state service for quality of education of Ukraine*. Retrieved from <https://zakon.rada.gov.ua/laws/show/168-2018-%D0%BF>
- Reznik, O.M., Volik, V.V., & Bezpalova, O.I. (2019). Approaches to education reform for children with special needs worldwide. *Asia Life Sciences: The Asian International Journal of Life Science*, 21(2), 447-453.
- Sysoiev, O. (2019). Licensing and accreditation of higher education institutions: Potential and efficiency of activities. *Continuing professional education: Theory and practice (Series: Pedagogical sciences)*, 4(61), 19-25.
- Yarmaki, K.P. (2019). Administrative procedure as an integrated part of the administrative process. *Naukovyi Visnyk Publichnoho Ta Pryvatnoho Prava*, 3(1), 262-268.
- Yuriichuk, I. (2018). Legal concept of administrative procedures. *Pidpriemnytstvo, Hospodarstvo I Pravo*, 5(1), 151-156.

This article was originally published in Special Issue, entitled: "Law, Politics, Economics and Human Rights: Global and National Perspectives", Edited by Dr. Ashgar Ali Bin Ali Mohamed